

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROCKEY EVANS)	
Claimant)	
VS.)	
)	
MIDWEST STAFFING SOLUTIONS, INC.)	Docket Nos. 1,000,955
MID CONTINENT ROOF & GUTTER)	& 1,000,956
Respondents)	
AND)	
)	
FIREMAN'S FUND)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carriers)	

ORDER

Mid Continent Specialists, Inc., appeals from the May 13, 2002 preliminary hearing Order of Administrative Law Judge Julie A. N. Sample. The Administrative Law Judge awarded claimant medical benefits from Mid Continent Specialists, Inc., an uninsured company, for the injuries suffered by claimant through a series of accidents beginning July of 2001 and continuing to the present, to his right hip and back.

ISSUES

Mid Continent Specialists, Inc., requests review of the following issues:

- "(1) The Administrative Law Judge erred in finding that an accidental injury was suffered on the date found by the Administrative Law Judge, vague as it was.
- "(2) The Administrative Law Judge erred in finding that the date of accidental injury was 'December, 2001' as same is impermissibly vague beyond her jurisdiction to so find.

- "(3) The Administrative Law Judge erred in finding that claimant's injury arose out of and in the course of claimant's employment with Mid-Continent Specialists in 2001.
- "(4) The Administrative Law Judge erred in finding that proper notice of accidental injury for an accident(s) in 2001 was furnished to respondent Mid-Continent Specialists.
- "(5) The Administrative Law Judge exceeded her authority in ordering medical compensation and other workers compensation benefits where there was no proper medical evidence to support any causal relationship between any alleged injury in July 2001 and thereafter and the medical condition of claimant for which he was seeking benefits.
- "(6) The Administrative Law Judge exceeded her jurisdiction in ordering that Mid-Continent Specialists provide 'the treatment claimant requests' in the absence of evidence supporting medical reasonableness and necessity for same.
- "(7) The Administrative Law Judge erred in finding that claimant's alleged 'accident' arose out of and in the course of his employment with Mid-Continent Specialists as opposed to some other employer."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire file and for the purpose of preliminary hearing, the Appeals Board (Board) finds that the Order of the Administrative Law Judge should be modified in that claimant's co-employer in this matter is Midwest Staffing Solutions, Inc.

Claimant initially suffered accidental injury to his right leg on November 8, 1999, when he fell off of a ladder, breaking his right leg. Workers' compensation benefits were provided through Midwest Staffing Solutions, Inc., and their insurance carrier Fireman's Fund. The matter was settled on January 31, 2001, based upon a 20 percent impairment to claimant's lower leg, at which time claimant was paid \$12,196.32 for the fractured leg.

Claimant returned to work, performing the same duties he had performed prior to the fall.

The relationship between claimant, Midwest Staffing Solutions, Inc., Mid Continent Roof & Gutter, and a separate entity, Mid Continent Specialists, Inc., is confusing.

Claimant performed work for Mid Continent Roof & Gutter. This entity is owned by Tony Evans, claimant's brother. Tony Evans also owns Mid Continent Specialists, Inc., against whom the Administrative Law Judge assessed the cost of claimant's ongoing treatment. Mid Continent Specialists, Inc., at the time of claimant's date of accident, was an uninsured company for workers' compensation purposes, as was Mid Continent Roof & Gutter.

The only testimony regarding the relationship of Mid Continent Roof & Gutter and Mid Continent Specialists, Inc., came from Steven Donovan, the risk manager for Midwest Staffing Solutions, Inc. Mr. Donovan stated that both entities were clients of Midwest Staffing Solutions, Inc. Both were owned by the same person, i.e., Tony Evans, were located at the same address and, in his mind, were one and the same.

As clients of Midwest Staffing Solutions, Inc., Mid Continent Roof & Gutter and Mid Continent Specialists, Inc., were provided employees (who were paid by Midwest Staffing Solutions, Inc.), payroll, administrative services, benefits, health insurance, 401K plan and, originally, workers' compensation insurance. Mr. Donovan described the employees as being co-employees with Midwest Staffing Solutions, Inc., and Mid Continent Specialists, Inc., and Mid Continent Roof & Gutter. Midwest Staffing Solutions, Inc., did not hire or fire employees, but instead provided the administrative services.

As stated above, initially Midwest Staffing Solutions, Inc., provided workers' compensation coverage for the other companies and their employees. However, this workers' compensation insurance arrangement changed in February of 2001. As of February 10, 2001, Midwest Staffing Solutions, Inc., advised both Mid Continent Roof & Gutter and Mid Continent Specialists, Inc., that they would no longer be providing workers' compensation insurance for the workers. Mid Continent did obtain workers' compensation insurance through October 11, 2001, at which time this insurance was canceled due to failure to pay premiums. The Mid Continent companies were then uninsured through January 16, 2002. As of January 17, 2002, Continental Western Insurance was contracted to provide workers' compensation insurance for the Mid Continent employees. However, the overall relationship, including the providing of leased employees, the payroll, consulting, administrative services, health and benefits programs continued with Midwest Staffing Solutions, Inc. The only description of this relationship as noted above was provided by Mr. Donovan, who called this a "co-employer relationship."

The evidence is undisputed that claimant suffered accidental injury arising out of and in the course of his employment for which benefits shall be provided under K.S.A. 44-501(a). The question, here, is against which employer and for what date or dates of accident are benefits awardable.

K.S.A. 2001 Supp. 44-508(b) defines "workman", "employee" or "worker" as "any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer."

The testimony in this case indicates that claimant is a co-employee of both Midwest Staffing Solutions, Inc., and the Mid Continent entities.

The primary purpose and intent of the workmen's compensation act is to provide protection to the workmen, and the act must be construed with a reasonable liberality designed to effect that purpose.

Mendel v. Fort Scott Hydraulic Cement Co., 147 Kan. 719, Syl. 2, 78 P.2d 868 (1938).

In Kansas an employee may have two employers, and in the event of personal injury covered by the workmen's compensation act, the employee may look to either one or both of his employers for compensation in accordance with Mendel v. Fort Scott Hydraulic Cement Co., 147 Kan. 719, 78 P.2d 868.

Drennon v. Braden Drilling Co., Inc., 207 Kan. 202, 206, 483 P.2d 1022 (1971).

In this instance, the testimony supports a finding that claimant is a co-employee of Midwest Staffing Solutions, Inc., and the Mid Continent entities. As an employee of Midwest Staffing Solutions, Inc., claimant is a leased employee to the Mid Continent entities. With the Mid Continent entities, claimant actually performed the roofing labors described above. As such, claimant may look to either one or both of his employers for compensation for the injuries suffered to his right hip and back in Docket No. 1,000,956.

The Board, therefore, finds that claimant suffered accidental injury arising out of and in the course of his employment with both Midwest Staffing Solutions, Inc. and Mid Continent Roof & Gutter.

The Board notes that the record is not clear regarding whether Mid Continent Roof & Gutter and Mid Continent Specialists, Inc., are privately owned or corporations. However, the claim filed was against Midwest Staffing Solutions, Inc., and Mid Continent Roof & Gutter. There does not appear to be a claim filed against Mid Continent Specialists, Inc., against whom the Administrative Law Judge awarded benefits. The Board finds that the Administrative Law Judge does not have the jurisdiction to award benefits against an entity not named in the litigation. It is acknowledged from the testimony in the record there may be no physical difference between Mid Continent Specialists, Inc., and Mid Continent Roof & Gutter. However, that relationship has not been clarified in the record.

Respondent also contends claimant failed to provide timely notice of his alleged accidental injury. K.S.A. 44-520 obligates that notice of accident be provided to the employer within ten days of the date of accident. The statute goes on to state that "actual

knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary."

It is uncontradicted in the record that claimant started developing hip and back problems in July of 2001. This has been alleged as a series of accidents beginning in July of 2001 and continuing to the present. The testimony is uncontradicted that claimant's employers were aware of his ongoing work-related problems and his request for medical treatment for the hip and back. In fact, beginning January 1, 2002, claimant was switched to an easier job, which eliminated the need for carrying heavy weights in the form of shingles and ladders. December of 2001 was the last time claimant was required to be on a roof.

His new job was an accommodation by his employer, due to his ongoing physical problems. The Board finds claimant's employers had actual knowledge of claimant's ongoing accidental injuries, thereby satisfying the requirements of K.S.A. 44-520.

Finally, Mid Continent Specialists, Inc., objects to the vagueness of the date of accident found by the Administrative Law Judge. While the Administrative Law Judge did not identify a specific date of accident, the award is sufficiently clear to determine what date the Administrative Law Judge used. The award specifically states "[f]or purposes of determining liability, the Court finds that claimant's accident date is December 2001."

As stated in the Order, the Administrative Law Judge also found that claimant sustained a series of accidents that culminated in late December 2001, "just before his job changed on January 2, 2002."

This is sufficient to determine that the Administrative Law Judge appeared to find claimant's date of accident to be a series through the last day claimant worked before the 2002 job change. For purposes of this preliminary hearing, that finding by the Administrative Law Judge is sufficiently specific to determine claimant's date of accident. Therefore, the Board finds that the Administrative Law Judge was not "impermissibly vague beyond her jurisdiction to so find."

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Julie A. N. Sample dated May 13, 2002, should be, and is hereby, affirmed with regard to the fact that claimant suffered accidental injury arising out of and in the course of his employment, but modified with regard to the employer against which liability may be held. Claimant is awarded medical benefits, with the bills to be incurred jointly and severally between Mid Continent Roof & Gutter and Midwest Staffing Solutions, Inc., and their respective insurance carriers, for an accidental injury occurring through the last day of December 2001.

IT IS SO ORDERED.

Dated this ____ day of August 2002.

BOARD MEMBER

- c: Mark E. Kolich, Attorney for Claimant
Patricia A. Wohlford, Attorney for Respondent Midwest Staffing Solutions/Fireman's Fund
John M. Graham, Attorney for Liberty Mutual Insurance
Robin E. Scully, II, Attorney for Respondent Mid Continent Specialists Inc.
Julie A. N. Sample, Administrative Law Judge
Director, Division of Workers Compensation